REMARKS/ARGUMENTS

Claims 1, 2, 5 – 13, and 15 – 21 are pending in this case and are presented for re-examination in view of the following comments. By this response and amendment, claims 3, 4, and 14 are cancelled without prejudice or disclaimer.

In the Outstanding final Office Action, the Examiner rejected claims 1 – 15 and 18 – 21 under 35 U.S.C. §112, second paragraph as being indefinite; and rejected claims 1 – 21 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,775,799 to Giorgetta et al. (hereinafter referred to as "Giorgetta").

By this Response and Amendment, the rejection of the claims as being anticipated by the Giorgetta is expressly and specifically traversed and reconsideration of this rejection is requested in view of the comments and arguments set forth below. The claims that have been amended have been so amended to obviate all rejections under Section 112, second paragraph, and to better define the claimed invention over the cited prior art of record.

REJECTIONS UNDER 35 USC §112, SECOND PARAGRAPH

In the Outstanding final Office Action, the Examiner rejected claims 1 – 15 and 18 – 21 under 35 U.S.C. §112, second paragraph as being indefinite.

RESPONSE

By this Response and Amendment, Applicants have amended the claims to provide the requisite wording specified by the Examiner.

Applicants submit that these amendments obviate the Examiner's rejection under 35 U.S.C. 112, second paragraph.

REJECTIONS UNDER 35 USC §102(e)

In the Office Action, the Examiner rejected all 21 claims as being anticipated by

Giorgetta.

RESPONSE

Reconsideration and withdrawal of the rejections is requested.

For a reference to anticipate an invention, all of the elements of that invention must be

present in the reference. The test for anticipation under section 102 is whether each and every

element as set forth in the claim is found, either expressly or inherently, in a single prior art

reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir.

1987); MPEP §2131. The identical invention must be shown in as complete detail as is

contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989);

MPEP §2131.

Upon review of the arguments set forth in Applicants' previous response, the Examiner

stated, in reference to the present application, that "the claims do not recite creating or using at

least one service flow formed from service packets combinable/multiplexable with an

information Ethernet packet flow", and further that "the claims do not recite providing any

signaling/service packet flow at the Ethernet layer."

Accordingly, as such features could help to define the present inventive subject matter

over the cited prior art of record, Applicants have so amended claims 1, 2, 6, 11, 13, 16, 18, and

21 to set forth similar features.

It is respectfully submitted that the above amendments to claims 1, 2, 6, 11, 13, 16, 18,

and 21 do not introduce any new matter to this application within the meaning of 35 U.S.C.

§132. Support for these amendments may be found, *inter alia*, in original claims 3 ("producing

the service packets forming one or more service flows...at the source adaptation element based on at least one of the following two operations; monitoring the information flow and monitoring external instructions") and 4 ("service packets compatible with the information packets are suitable for multiplexing with one another"), and in the specification as published, including *inter alia* at paragraph 0041 ("introducing various types of the service packets forming the above-mentioned so-called service flows"), at paragraph 0056 ("providing a signaling channel intended for performing one or more signaling functions at the Ethernet level") and at paragraph 0030 ("preserving the signaling channel at the Ethernet level.")

Applicants have further amended claim 1 to include the features of original claims 3 and 4, which have accordingly been cancelled without prejudice or disclaimer.

Applicants have further amended claim 13 to include the features of original claim 14, which has accordingly been cancelled without prejudice or disclaimer.

Applicants submit that, in comparison with the invention claimed in amended Claims 1 and 16, the Giorgetta reference (as well as the previously cited Naveh reference and other cited references) does not describe or suggest creating or using at least one service flow **formed at the Ethernet level** from **service packets into which data on signaling functions have been introduced**, whose packets are **multiplexed with an information Ethernet packet flow**.

Applicants further submit that, in comparison with the invention claimed in amended Claim 2, the Giorgetta reference (as well as the previously cited Naveh reference and other cited references) does not describe or suggest a **source adaptation element** which produces **service flows at the Ethernet level**, or the step of **multiplexing the service packets of said one or more service flows with the information packets of the information flow**.

While the Examiner cites col. 8 lines 64 et seq. of Giorgetta as anticipating the feature of "service packets," Giorgetta nowhere describes producing **service packets** which **"carry [an] indication of a...signaling function**," nor suggests any indication of a **service function** in such packets, nor suggests **service packets multiplexed with an information Ethernet packet flow**. Therefore, Giorgetta cannot anticipate the present invention as claimed herein.

In contradistinction, Giorgetta proposes "engaging", in the fast Ethernet traffic, performance monitoring operations, such as Forward Error Correction (FEC) operation known for many optical networks protocols (SONET, SDH, OTN). The operations of performance monitoring of the Ethernet traffic, as they are described and illustrated in the Giorgetta reference, comprise monitoring the Ethernet traffic (see block 30 in Fig. 3) but do not produce any packet flow (service flow) which would be combined/multiplexed with packets of the Ethernet traffic (information flow). The above fact is demonstrated by the "dead ends" of box 30 of Fig. 3 and of box 205c of Fig. 6: they do not have outgoing arrows which would mean combining any new flow with the existing data traffic.

The Giorgetta's term "engaging" can be understood only in the meaning of applying, since any other meaning has no support in the Giorgetta's description in its specification.

The maximal influence of the monitoring results which can be understood from studying the Giorgetta reference is that, for example, in the FEC operation, a continuous sequence of bits (**not packets**) is produced while monitoring information packets, and such bits are some how introduced into packet headers of the monitored informational packets (FEC processing of any information stream is followed by encoding that information stream).

As has been mentioned in the response to the previous Office Action, the modification if at all performed at the Ethernet level, relates to a known standard functionality at the Ethernet

level, according to which the informational packets are changed depending on the errors in the Ethernet traffic.

The Giorgetta reference, similarly to the previously cited Kalman reference, mentions that data in the information stream can be modified (for example, headers of the packets can be modified). In the Kalman reference, where we could assume that the "modification" is performed at the Ethernet layer, Giorgetta modifies SDH frames at the SDH/SONET layer; however, both in Kalman and in Giorgetta, no additional/separate service packet flow is created; any modifications affect the informational packets/frames/streams themselves.

Contrary to that, **the present invention, as set forth in the presently amended claims, proposes forming a separate flow of additional service packets to be transmitted together (in a combined packet flow) with the informational packets at the Ethernet level** - and does **not propose modifying informational packets.**

The Examiner continues to contend that Giorgetta describes combining (interleaving) information and service flows.

Firstly, since Giorgetta does not describe service packet flows, he cannot describe such interleaving.

Secondly, **what Giorgetta does describe is the interleaving of informational flows.**

Fig. 6 and the related description disclose that Giorgetta modifies information flows at the SDH/SONET layer (block 205b). Giorgetta interleaves ndata streams (block 216) which, in any possible combination, are information streams. Moreover, the informational flows are combined at the SDH/SONET level. The GBE performance monitoring 205c does not produce any additional packet flow - see the "dead end" of block 205c in Fig. 6 and the similar "dead end" of the block 30 in Fig. 3).

Giorgetta neither describes nor suggest providing any signaling/service packet flow at the Ethernet layer, and, consequently, does not and cannot propose interleaving/combining such a service packet flow with any of the mentioned informational flows.

In view of the above arguments, Claim 1 should be considered patentable in view of the above arguments.

In section 8g of the Office Action, the Examiner discusses his rejection of Claim 2. The Applicants disagree with the Examiner's criticism of Claim 2. At least in view of the above arguments, Claim 2 is patentable. Moreover, the Examiner refers to Figures 2,3,6 and the Abstract of Giorgetta, through neither of them describes/suggest providing operating points between any network domain and an Ethernet network (device), and definitely the cited figures/abstract do not describe the specific equipment of such operating points, as described in Claim 2.

In paragraph 20 of the Office Action, the Examiner discusses his rejection of Claim 3. In respect to Claim 3, the Giorgetta reference might describe producing any succession of binary information based on monitoring SDH/SONET information stream (the paragraph bridging col. 9 and col. 10 of Giorgetta). However, no service/signaling packets are formed by Giorgetta from that binary information; that information is used for modifying the same information flow.

In a similar way, all of the remaining Examiner's rejections become null and void at least in view of the arguments presented with respect to amended Claim 1. For example, in section 8i, the Examiner criticizes Claims 11 and 12 by again referring to Giorgetta. However, as in Claim 1, the Examiner overlooks the fact that Giorgetta speaks about the **information** packets/frames, while the present invention claims inserting an indication of a service function into the newly

created **service packets into which data on signaling functions have been introduced**, which

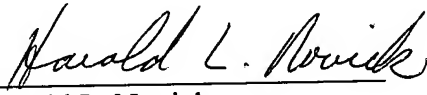are **multiplexed with the information packets**.

CONCLUSION

In light of the foregoing, Applicants submit that the application is now in condition for

allowance. If the Examiner believes the application is not in condition for allowance, Applicants

respectfully request that the Examiner contact the undersigned attorney.

In the event this paper is not timely filed, Applicants petition for an appropriate extension

of time. Charge any fee deficiency or credit any overpayment to Deposit Account: No. 14-

0112.

Respectfully submitted,

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